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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,897	10/15/2003	Christopher A. Rygaard	18511-010001	7543
26181	7590	09/03/2009		
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER KANG, INSUN	
			ART UNIT 2193	PAPER NUMBER
			NOTIFICATION DATE 09/03/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/686,897	Applicant(s) RYGAARD, CHRISTOPHER A.	
	Examiner INSUN KANG	Art Unit 2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the RCE amendment filed on 6/19/2009.
2. Claims 1-42 are pending in the application.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-18 are non-statutory because they are directed to a console hat does not have any physical structural elements. In the specification, the console is known as a jumping application controller module 140 (page 10, lines 2-5) which is a mere program. Thus, the alleged "console" of the claims turns out to be an abstract idea for being a computer program per se, and, thus, does not fit within the definition of the categories of patentable subject matter set forth in § 101. Therefore, the claim is non-statutory.

The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101. http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 5, 7-10, 14, 16-18, 24-33, and 40-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Per claim 5, in line 2, it is unclear to which first behavior package it is referring because a first behavior package is introduced in claim 1. Interpretation: the first behavior package.

Per claims 7, 16, “one or more behavior packages...a host computer” is interpreted as: the one or more behavior packages...the next host.

Per claim 8, 17, and 41, “a host computer...of the host computer” is interpreted as “the next host...of the next host.

Per claim 9, 18, 31, 33, 40, 42, in line 3, “a host computer” is interpreted as “the next host.”

Per claim 10, in line 9, “a first behavior package” is interpreted as: a first behavior package of the one or more behavior packages.

Per claim 14, in line 2, it is unclear to which first behavior package it is referring because a first behavior package is introduced in claim 10. Interpretation: the first behavior package.

Per claim 25, in line 12, “a first behavior package” is interpreted as: a first behavior package of the one or more behavior packages.

Per claim 29, in line 2, it is unclear to which first behavior package it is referring because a first behavior package is introduced in claim 25. Interpretation: the first behavior package.

Per claim 32, in line 2, “the host computer” is interpreted as “the next host.”

Per claim 24, in line 10, “a first behavior package” is interpreted as: a first behavior package of the one or more behavior packages.

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Per claims 1-18, it is not clear what the "console" means because the body of the claim does not support the preamble reciting a console. The console is directed to a program. Therefore, claims 1-18 reciting a console appears inaccurate lacking the necessary structural elements to be a physical system and support, even in its broadest reasonable sense, the preamble.

Per claims 26-28 and 30, these claims are rejected based on dependency on claim 25.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Ad Astra ("Jumping Beans," Ad Astra Engineering, 12/3/1998, pages 1-44) hereafter "Astra."

Per claim 25:

Astra discloses:

-management and security console (i.e. "Jumping Beans' central management console," abstract, page 1, paragraph 3; Jumping Beans' security features, under security section in page 5); two or more host computers connected to the console by a computer network, wherein each host computer executes a jumping application (i.e. "Jumping Beans...which can move from host to host during execution," page 1, first paragraph; page 8, Figure 1.).

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-wherein the console includes a morphing module that alters a jumping application as the jumping application jumps between hosts, where the morphing module receives the jumping application from a first host and alters the jumping application before sending the jumping application to a next host (i.e. “Jumping Beans’ central management console,” abstract, page 1, paragraph 3; figure in page 24, page 30, second paragraph),

a database that contains one or more behavior packages for the jumping application, wherein each behavior package alters the behavior of the jumping application for a particular host (i.e. “trusted repository to which providers submit agents in forms suitable for various platforms,” page 11, lines 1-3) .

wherein the morphing module includes instructions that determine the next host to which the jumping application is being dispatched and instructions that alter the behavior of the jumping application for the next host using a first behavior package associated with the next host (i.e. page 31, Messaging section, page 33, Itinerary section).

Per claim 26:

Astra further discloses:

- the console instructions that determine the next host further comprises instructions that identify the next host of the jumping application based on an itinerary of the jumping application (i.e. Itinerary section in page 10 which specifying the dispatch path which a mobile application will follow in order and the agencies which the mobile application will visit).

Per claim 27:

Astra further discloses:

- the console instructions that alter the behavior of the jumping application further comprise instructions that gather information about each host of the jumping application system in order to determine the capabilities of each host (i.e. see Remote data gathering section, page 4).

Per claim 28:

Astra further discloses:

- the console instructions that gather information further comprises instructions that store one or more particular behavior package associated with each host of the jumping application system wherein each behavior package adjusts one of a state and a behavior of a jumping application using the capabilities of the particular host (i.e. page 31, Messaging section, page 33, Itinerary section).

Per claim 29:

Astra further discloses:

- the console instructions that alter the behavior further comprises instructions that identify a first behavior package associated with the next host for the jumping application and instructions that modify one of the state and the behavior of the jumping application using the identified behavior package (i.e. page 31, Messaging section, page 33, Itinerary

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section).

Per claim 30:

Astra further discloses:

- instructions that forward the jumping application with the altered behavior onto the next host (i.e. see Store-and Forward section in page 6).

Per claims 31 and 32:

Astra discloses one or more groups and each group contains one or more behavior packages associated with a set of capabilities of a host computer and the host computer is assigned to a group based on the capabilities of the host computer (i.e. page 31, Messaging section, page 33, Itinerary section, page 36 first paragraph).

Per claim 33:

Astra further discloses:

- a plurality of behavior packages associated with each jumping application wherein each behavior package for the jumping application is associated with a particular set of capabilities of a host computer (i.e. page 31, Messaging section, page 33, Itinerary section, page 36 first paragraph).

Per claim 19:

Astra discloses:

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- -receiving at a morphing console a jumping application dispatched from a first host during a jump between hosts (i.e. see Remote data gathering section, page 4).
- determining a next host to which a jumping application is being dispatched (i.e. Itinerary section in page 10 which specifying the dispatch path which a mobile application will follow in order and the agencies which the mobile application will visit).

altering the behavior of the jumping application for the next host based on a behavior package associated with the next host (i.e. “Jumping Beans’ central management console,” abstract, page 1, paragraph 3; figure in page 24, page 30, second paragraph),

dispatching the jumping application to the next host (i.e. Itinerary section in page 10 which specifying the dispatch path which a mobile application will follow in order and the agencies which the mobile application will visit).

Per claims 20-24, they are the method versions of claims 26-33, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 26-33 above.

Per claims 1-9, they are the console versions of claims 25-33, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 25-33 above.

Per claims 10-18, they are other console versions of claims 25-33, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 25-33 above.

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Per claims 34-42, they are the server computer versions of claims 25-33, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 25-33 above.

Response to Arguments

9. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments filed on 6/19/2009, Astra's Jumping Beans management console (MaSC) that tracks, manages, and controls the entire Jumping Beans system (page 25, Figure 1 which shows Jumping Bean architecture) is the management and Security Console (MaSC) in the instant invention (see, Figure 5 which illustrates the same architecture). The Jumping Beans console provides the centralized configuration management and tracking of mobile applications on the network (page 5, last par). The only portion in the instant specification that describes the meaning of "as it is jumping between hosts" recited in the claims is "while the jumping application is in the MaSC," the MaSC alters the state and/or behavior of the jumping application...before forwarding the jumping application to the next host (page 11, lines 5-10)." Therefore, the morphing occurs while the jumping agent is in the MaSC. As stated above, the control, configuration and management of the mobile applications and security are also performed from the centralized Jumping Beans management console in Astra's Jumping Beans architecture (page 5, last par.; page 1) . By using the "single central location" provided by the console, the multiple mobile agents can be handled "simultaneously in transit without resource collisions (page 12, second par.)." The mobile agents can be easily integrated with the hosts environments via the Jumping Beans management and security console (i.e. page

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5, Integration into existing environments section). Astra discloses configuring of the mobile applications (morphing) in the console as in the claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to INSUN KANG whose telephone number is (571)272-3724. The examiner can normally be reached on M-R 7:30-6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis A. Bullock, Jr. can be reached on 571-272-3759. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Insun Kang/
Primary Examiner, Art Unit 2193